

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA \* Appeal No. 18-2104  
\*  
versus \* No. 16-00097 (PG)  
\*  
RAYMOND SANTANA-AVILES (2) \* October 22, 2018  
\* \* \* \* \*

REVOCATION OF SUPERVISED RELEASE HEARING  
BEFORE THE HONORABLE JUAN M. PEREZ-GIMENEZ  
UNITED STATES DISTRICT JUDGE

Appearances:

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Proceedings recorded by mechanical stenography using  
computer-aided transcription software.

1                   **\*\*\* REVOCATION OF SUPERVISED RELEASE HEARING \*\*\***

2                   **(October 22, 2018)**

10 : 5 9   3           **THE DEPUTY CLERK:** Criminal case 16-97, United States  
10 : 5 9   4           of America versus Raymond Santana-Aviles. Case called for  
11 : 0 0   5           revocation of supervised release. On behalf of the government,  
11 : 0 0   6           Assistant U.S. Attorney Daynelle Alvarez. On behalf of the  
11 : 0 0   7           defendant, the Assistant Public Defender Francisco Celedonio.  
11 : 0 0   8           The defendant is present, and he will be assisted by the  
11 : 0 0   9           official court interpreter.

11 : 0 0   10          **AUSA ALVAREZ:** Good morning. The government is ready  
11 : 0 0   11          to proceed.

11 : 0 0   12          **AFPD CELEDONIO:** Good morning, Your Honor. The  
11 : 0 0   13          defense is ready to proceed. May we approach briefly, Your  
11 : 0 0   14          Honor?

11 : 0 0   15          **THE COURT:** Pardon me?

11 : 0 0   16          **AFPD CELEDONIO:** May we approach, Your Honor?

11 : 0 0   17          **THE COURT:** Yes.

11 : 0 0   18          (The following proceedings were held at the bench.)

11 : 0 0   19          **AFPD CELEDONIO:** Judge, I have a request which is --  
11 : 0 0   20          I've looked at my client's history, the old PSR. Initially he  
11 : 0 0   21          was sentenced to nine months by Your Honor. I'm aware and he's  
11 : 0 0   22          aware of the drug history and the problems that he's had with  
11 : 0 0   23          drugs.

11 : 0 0   24                   My request, Your Honor, is that rather than  
11 : 0 0   25          proceed today -- we are not contesting the violations that are

1 alleged in the notification to the Court; but I believe, Your  
2 Honor, that -- this is a 21-year-old kid. He needs drug  
3 treatment. I think that the Court will be in a better position  
4 to evaluate how much and if jail is more appropriate if he's  
5 placed in a drug treatment and then this violation hearing is  
6 hanging over his head in a way. So, for example, Your Honor,  
7 what I'm proposing is that we continue this hearing.

8 **THE COURT:** Any proposal to that is -- he has a very  
9 nonchalant attitude towards the Court. He was summoned twice,  
10 and he didn't show up. He was summoned again. He showed up,  
11 but he didn't want to give his sample for a drug testing. He  
12 was positive on July 19th. On August the 9th there was a home  
13 visit by the probation officer, and at that time the probation  
14 officer was unable to collect any urine specimen.

15 **AFPD CELEDONIO:** We can see that, Your Honor.

16 **THE COURT:** I know you can see it. Due to lack of  
17 desire. As I mentioned before, he failed to report twice, as  
18 summoned by the probation officer. And he mentioned to the  
19 marshal service in an interview that he could be anywhere, he  
20 could be wherever he wanted to. You know?

21 **AFPD CELEDONIO:** If I may, Your Honor, just if I may  
22 expand on my request, his -- the nonchalant attitude --

23 **THE COURT:** Why do we have to approach the bench for  
24 that? Put it on record.

25 **AFPD CELEDONIO:** Very well, Your Honor.

1 (End of bench conference.)

2 **AFPD CELEDONIO:** Yes, thank you, Your Honor. Your  
3 Honor, as the Court is aware that the Brahman's principle issue  
4 here is the drug abuse history. As the Court knows, based on  
5 his -- we are not contesting the violations as alleged. What  
6 I'm trying to bring to the Court's attention, Your Honor, is  
7 that we're talking about a 21-year-old defendant with a  
8 clearly -- a long-term -- even though he's only 21, he's been  
9 under the -- he's been using controlled substances since he was  
10 14. That's documented in the PSR from the previous sentence at  
11 Paragraph 44, and that continues to be the concern that has  
12 brought him before the Court and that has infected his  
13 relationship with probation. It's the usage of narcotics,  
14 starting at age 14. We're talking about a combination of  
15 marijuana, Percocet, Tramadol.

16 He has tested positive. We do not dispute that,  
17 Your Honor; but the attitude that I think probation refers to  
18 or identifies has to do precisely with that, with the fact that  
19 he has drug abuse concerns and the fact that he's a  
20 21-year-old.

21 Previously, Your Honor sentenced him on the  
22 underlying offense to nine months. The guidelines in this case  
23 are three to nine months. I have taken the opportunity, since  
24 the initial preliminary hearing, of meeting with him on various  
25 occasions. Your Honor, he very much is aware of the drug

1 problem. He very much is aware that he has to overcome that.

2 The specification at Page 2 mentions that he was  
3 approaching a, quote, "known drug spot." That location happens  
4 to be the home of Jose Luis Aviles, who is his uncle. So he  
5 was actually on the way to the residence of a family member.  
6 He wasn't on the way toward a narcotics trafficking location.  
7 Even though the authorities may consider it that, in his mind,  
8 Your Honor, he is going to visit family; and that's why he  
9 interacted with the marshals in the way that he did.

10 I suggested to the Court -- I am suggesting to  
11 the Court that the better way perhaps is to address the drug  
12 abuse problem. He was at Guara Bi. Even though he tested  
13 positive while he was at the program, he successfully completed  
14 the program on July 16th of this year.

15 The Court can -- certainly has the option of  
16 going forward today and imposing a sentence. The Court also  
17 has that option even after he completes a drug treatment,  
18 in-patient drug treatment program; and that is what I'm  
19 suggesting, Your Honor, that after giving him the opportunity  
20 to do an in-patient program -- and it will be the second time,  
21 admittedly -- but at that point, Your Honor, I think that that  
22 will address the attitudinal concerns.

23 Whether the attitude towards probation is  
24 nonchalant or not, after a stint at a drug treatment program, I  
25 think the Court can better gauge whether or not he is

1 responsive; and to the extent that he is responsive and to the  
2 extent that he successfully completes the program, I think the  
3 Court can then be in a better position to impose a sentence.

4 So I'm asking the Court to consider that, to  
5 consider continuing this hearing, but not to let him out of the  
6 community, but to have him placed in a drug treatment program  
7 as an alternative to simply putting him in jail for either a  
8 period from three to nine months, which is the guideline range,  
9 because I think that accomplishes very little. Putting him in  
10 jail for three or four or five months accomplishes warehousing  
11 him.

12 He's not going to be able to get a drug program  
13 in jail in that short period of time. So when he was released,  
14 we still have the same underlying concerns about drug usage and  
15 the dependency; whereas, Your Honor, in my suggestion, it  
16 allows him to at least begin that process, which he has to  
17 complete eventually, the process of overcoming the addiction.  
18 And, thereafter, the Court can again impose whatever sentence  
19 the Court deems appropriate.

20 It's possible that if he is successful, if he  
21 completes the program, if he changes the attitude that has been  
22 identified, that then the Court may have a better idea of what  
23 is an appropriate sentence, given the fact that he is maturing.  
24 He's 21 years old, Judge. I mean the notion that he wants  
25 to -- that he was not compliant with the marshals when he was

1 confronted, those are the actions of a 21-year-old kid who's  
2 been using narcotics, Judge. It doesn't mean that he is an  
3 inherently bad kid. It means that he's 21, that his brain is  
4 still underdeveloped, that he's under the influence of  
5 narcotics. And I'm asking the Court to consider that as a  
6 mitigating factor.

7 And again, after he completes a program -- well,  
8 certainly, if he fails, then the Court can bring down the  
9 hammer. But if he doesn't fail, if he actually is successful  
10 and he begins to change his attitude and his perspective, then  
11 I think the Court will have a more enlightened person before it  
12 and can impose an appropriate sentence, Your Honor.

13 **THE COURT:** Thank you. Anything from the government?

14 **AUSA ALVAREZ:** Yes, Your Honor. The government is  
15 requesting that his supervised release term be revoked and that  
16 he be sentenced to nine months, which is the higher end. The  
17 government understands that this individual has had the chance  
18 before, Your Honor. He already participated in in-patient  
19 treatment. He participated in out-patient treatment. His  
20 probation officer has been trying to assist him in any way that  
21 he needs, and he has had an attitude of non-compliance and of  
22 disrespect to the probation officer.

23 And even when encountered by the marshals, he  
24 did not -- he did not notify the probation officer of this  
25 event. And, furthermore, when the marshals spoke to him about

1 it, as has been mentioned here before, his response was, in  
2 other words, that he could be wherever he wanted to be at any  
3 time or something of that sort.

4 So we're also referring Your Honor to the last  
5 final revocation hearing, which was held before Honorable Judge  
6 Gelpi -- yes, Gelpi, at April 9, 2018, where he was given  
7 another chance, Your Honor; and specifically on the second page  
8 of that order mentions that failure to comply will result that  
9 the defendant be revoked and be incarcerated, according to the  
10 guidelines. So he knew. He has known that if he didn't  
11 comply, this is what was coming. So, this is the time, Your  
12 Honor; and that's the government's request.

13 **AFPD CELEDONIO:** If I may very briefly, Your Honor?  
14 Extremely briefly, just to bring to the Court's attention, the  
15 government is requesting nine months. On the underlying  
16 weapons case, the 922(k) violation that Your Honor sentenced  
17 him to in 2016, he received a nine-month sentence. In terms of  
18 the equities, Your Honor, a nine-month sentence for failing to  
19 comply with drug treatment and being, quote, "noncompliant and  
20 disrespectful" is just completely onerous, nine months for,  
21 quote, "being disrespectful."

22 In the world of drug treatment, relapse is part  
23 of the recovery process. Nobody gets out of jail, has a drug  
24 problem, and has a smooth path immediately to overcome it.  
25 Inherent in the concept that an individual is going to overcome



1 his addiction is the notion that he's going to have missteps,  
2 that he is going to fall back.

3 And again, Your Honor, I reiterate: We're  
4 talking about a 21-year-old kid. It is simply not necessary to  
5 impose a nine-month sentence. To the extent the Court imposes  
6 a lesser sentence, I'm requesting a drug program. I'm  
7 requesting a three-month sentence. To the extent it's not  
8 enough, he will continue to be on supervision, so the Court  
9 will always have the opportunity of putting him back in jail  
10 for a longer period of time; and I'm asking the Court to  
11 consider those points, Your Honor.

12 Nine months for, quote, "being disrespectful" is  
13 just not equitable in the context of the underlying sentence  
14 for the possession of a weapon. He's not been convicted of a  
15 crime. He wasn't selling drugs. He wasn't in possession of a  
16 weapon. He wasn't in the presence of narcotics or any weapons.  
17 He's essentially failing to heed to drug treatment because he's  
18 addicted, and he's going to visit family which happens to be a  
19 family or a location that's been identified as a --

20 **THE COURT:** I thought you were going to be short.

21 **AFPD CELEDONIO:** I was, Your Honor. I'm about to  
22 finish, Your Honor. So I'm asking the Court to consider the  
23 equities in what's an appropriate sentence. Thank you, Judge.

24 **THE COURT:** Thank you. Mr. Santana, do you care to  
25 state anything? You don't have to, but you may do so.

1           **THE DEFENDANT:** I recognize that I am wrong. It is  
2 human to recognize one's mistakes. That's why I am asking for  
3 an opportunity to recover all that I have lost and to start  
4 putting my life together again.

5           **THE COURT:** Anything else from the government?

6           **AUSA ALVAREZ:** Nothing further, Your Honor.

7           **THE COURT:** All right. After having heard both  
8 parties in this case, the Court finds that Mr. Santana-Aviles  
9 has violated the conditions of the supervised release term by  
10 not reporting to the U.S. probation officer; not following her  
11 instructions; and using controlled substances, as cited in the  
12 motion filed on September the 12th, 2018, at Docket 109.  
13 Therefore, the supervised release term imposed is hereby  
14 revoked.

15                       To impose a sentence, the Court will consider  
16 Chapter 7 policy statements of the sentencing guidelines  
17 regarding revocation of supervised release. Pursuant to  
18 guideline 7D1.1A1, a Grade C violation has been determined; and  
19 this involves a violation of a condition of supervision. He's  
20 in a criminal-history category of one and a Grade C violation.  
21 The guideline imprisonment range in this case is from three to  
22 nine months, pursuant to Guideline 7B1.4A1.

23                       Pursuant to Title 18, United States Code,  
24 Section 3583(e)(3), however, upon revocation of supervised  
25 release, the Court may impose a sentence of imprisonment of not

1 more than three years, since the original offense was a Class D  
2 felony.

3           The Court is aware that on January 17th, 2018, a  
4 motion at Docket 95 was filed by the U.S. probation officer  
5 notifying violations of conditions of release and requesting a  
6 judicial reprimand. On January 19th, 2018, the Court issued an  
7 arrest warrant at Docket 97. Notwithstanding, at the  
8 revocation hearing held on April, 2018, the Court granted  
9 Mr. Santana be given an opportunity. His supervised release  
10 was not revoked, but rather modified to include intensive  
11 in-patient substance abuse treatment for a period of 90 days,  
12 to be followed by out-patient treatment. Thus this is the  
13 second revocation hearing proceeding that Mr. Santana-Aviles is  
14 facing within the past six months. Docket 109 reflects that  
15 two months after the revocation hearing, the supervisee started  
16 incurring a violation of his terms of supervised release.

17           The Court has reviewed the offender's personal  
18 history, his continued struggles to comply with the law and  
19 conditions of release, as well as the nature and repetitive  
20 breaches of trust. We have from the motion filed by the  
21 probation officer on September the 12th of 2018, that even  
22 while he was receiving the in-patient treatment at Guara Bi, he  
23 gave a positive for the use of buprenorphine, which is a  
24 controlled substance -- well so that during his in-patient  
25 treatment he also was able to make use of drugs.

1           Once he was released for out-patient treatment  
2   on July 16th from the intensive in-patient treatment program,  
3   on July 19th, three days later, a home visit was completed. A  
4   drug test was collected. The same was positive for the use of  
5   opiates. At first Mr. Santana-Aviles denied the use; but later  
6   he admitted to taking Percocet pills. Once again, he was  
7   verbally reprimanded and counseled about his reckless behavior.

8           On August 9th, during a home visit, a drug test  
9   was unable to be collected due to his lack of desire. One day  
10   later, August the 10th and on August 16th, he failed to report  
11   to the office for a drug test as part of his treatment program.  
12   He also failed to call the probation officer on August 13th.  
13   Mr. Santana-Aviles, at the time of the filing of this motion,  
14   he was receiving treatment. He had been verbally reprimanded.  
15   Yet he continues to fail to comply with the supervised release  
16   conditions. Furthermore, the marshals reported to the  
17   probation officer that on August 29th, 2018, they saw him enter  
18   a home, which counsel has stated is his uncle's. But when he  
19   was questioned by the marshals service, allegedly he expressed  
20   to them that he could be wherever he wanted.

21           After reviewing the offender's present history,  
22   his continuing struggles to comply with the law and the  
23   conditions of release, as well as the nature and repetitive  
24   breaches of trust, the judgment of this Court is that  
25   Mr. Santana-Aviles is to be sentenced at the maximum statutory

1 sentence, pursuant to Title 18, United States Code,  
2 Section 3583(e)(3); that is two years of imprisonment, under  
3 the custody of the U.S. Bureau of Prisons. Upon release of  
4 confinement, he is to be placed on supervised release for 12  
5 months, with the standard and special conditions previously  
6 imposed in the original sentence with the case and also with  
7 the following conditions:

8 He shall remain under home detention with an  
9 electronic monitoring at his residence of record for a period  
10 of six months, to commence upon his release from imprisonment.  
11 In this time he shall remain at his residence at all times  
12 except for employment, education, substance abuse treatment  
13 program, mental health treatment, or any Court ordered  
14 obligation approved in advance by the probation officer.

15 That is the finding of the Court. I have to  
16 advise you, Mr. Santana-Aviles, that you can appeal these  
17 findings if you feel they are contrary to law or if they were  
18 unlawfully applied in your case. Any notice of appeal must be  
19 filed within 14 days of the judgment being entered; and if you  
20 are unable to pay for the cost of the appeal, you may apply for  
21 leave to appeal in forma pauperis. At this time you will  
22 continue to be represented by the public defender, if and  
23 whenever substitute counsel is appointed. That is the judgment  
24 of the Court.

25 **AFPD CELEDONIO:** Your Honor, the circuit requires me

1 to notify the Court that we object to the sentence as  
2 substantively and procedurally unreasonable. The Court's  
3 departure of variance upward from a three to nine month  
4 guideline to two years is excessive; and we object to the  
5 Court's sentence, Your Honor.

6 **THE COURT:** Thank you. But there was not a  
7 departure. The Court just referred to the sentencing --  
8 referred to the law, not to the guidelines. I did not perform  
9 any departures in this case.

10 **AFPD CELEDONIO:** I recognize that, Your Honor; but  
11 the sentence is a variance from a three to nine month  
12 recommended by the guidelines.

13 **THE COURT:** It's not a variance either because it's  
14 not an issue of the sentencing guidelines. It's just strict  
15 application of the law. That is not a variance. Thank you.  
16 You may withdraw.

17 **AFPD CELEDONIO:** Thank you, Your Honor.

18 **AUSA ALVAREZ:** Good day, Your Honor.

19 **THE COURT:** Good day.

20 ***(Matter adjourned.)***

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**CERTIFICATE**

I, Donna A. Goree, CSR, RPR, CRR, Official Court Reporter for the United States District Court, District of Puerto Rico, certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of proceedings in the above-entitled matter.

s/ Donna A. Goree  
Donna A. Goree, CSR, RPR, CRR  
Official Court Reporter